

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1075 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

PATEL VADILAL MADHAVLAL

Versus

PATEL ISHWARBHAI PARSOTTAMDAS

Appearance:

MR YF MEHTA for Petitioners

None present for Respondents

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 18/11/98

ORAL JUDGEMENT

#. This civil revision application is directed under Section 115 of the Civil Procedure Code, 1908, by the plaintiffs-petitioners against the order of the 2nd Joint Civil Judge, (S.D.), Narol, dated 9.12.84 under which the application filed by them for recalling of the order dated 19th October 1984, under which the suit was dismissed for non prosecution has been rejected.

#. The learned counsel for the plaintiffs-petitioners contended that on 19th October 1984, the suit was fixed for the plaintiffs' evidence and even if any of the plaintiffs or their advocate was not present, the Court could not have dismissed the suit for non prosecution. At the worst, the evidence of the plaintiff could have been closed and the suit could have been posted for evidence of the defendant but the course adopted is illegal. It has next been contended that the application filed for recalling of the said order has been rejected on the ground which is not a legal ground and it is a case where the learned trial Court has committed serious material irregularity in exercising of its jurisdiction in passing of the impugned order.

#. I have given my thoughtful considerations to the submissions made by learned counsel for the petitioners.

#. From the application of the plaintiffs-petitioners dated 2.11.84, I find that the suit was fixed on 19th October 1984 for recording of the plaintiffs' evidence. In case on that date neither the plaintiffs or their advocate was present, at the most, the Court could have closed the evidence of the plaintiffs and posted the matter for the final hearing but that course has not been adopted and on the contrary, the suit has been dismissed for non prosecution. Worst part is that when application filed for recalling of this order, the same has been rejected. The application for recalling of this order has been filed within a reasonable time. The order for dismissing the suit for non prosecution was passed on 9.10.84 and this application has been filed on 2nd November 1984. In these facts and circumstance, otherwise also, the learned trial Court, instead of taking stricter view of rejecting the application, the suit should have been ordered to be restored to its original number. Moreover, I find from the record of this revision application that on 19th October 1984, nobody was also present from the side of the defendant. Same is the position on 9.12.84. So the defendant was also not pressing for dismissal of the suit or for dismissal of the application. In presence of these facts, I am satisfied that the order of the learned trial Court dated 9.12.84 is perverse and it cannot be allowed to stand. Moreover, in case this order is allowed to stand, it will occasion failure of justice and certainly will cause injury to the plaintiffs-petitioners.

#. In the result, this civil revision application is allowed and the order dated 9.1.84 of the 2nd Joint Civil Judge (S.D.), Narol, is quashed and set aside and the

application filed for recalling of the order dated 19th October 1984 dismissing the suit for non prosecution is granted and the order dated 19th October 1984 is recalled and the suit is restored to its original number. The learned trial Court is directed to decide the suit within a period of three months from the date of receipt of writ of this order. Whatever evidence the parties want to produce, they shall complete the same within a time bound programme as laid down by the trial Court and to cooperate to decide the suit within time granted by this Court.

(S.K.Keshote, J.)

(sunil)